

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

Frederick Hall,

Petitioner
Plaintiff(s),

-vs-

Case No. 1:02-CV-00034

Ernie Moore, Warden,

Respondent
Defendant(s),

**APPLICATION AND AFFIDAVIT BY INCARCERATED PERSON
TO PROCEED WITHOUT PREPAYMENT OF FEES**

**NOTICE TO PRISONERS REGARDING
PROCEEDINGS IN FORMA PAUPERIS**

Prisoner account statement required. A prisoner seeking to bring a civil action or file an appeal without prepayment of fees or security therefor must submit a certified copy of the trust fund account statement (or institutional equivalent) for the six-month period immediately preceding the filing of the complaint or the filing of a notice of appeal. Prison Litigation Reform Act of 1995, Pub. L. No. 104-131, 110 Stat. 1321, § 804(a) (1)-(3), 28 U.S.C. § 1915(a)-(h). The trust fund account statement is obtained from the cashier of the prison or prisons at which the prisoner was confined during the previous six months. 28 U.S.C. § 1915(a)(2). Since an appeal is a separate action, another application to proceed without prepayment of fees or security therefor must be filed when you file a notice of appeal. A prisoner seeking habeas corpus relief is not required to file a prisoner account statement.

Filing Fees. The current fees for filing a habeas corpus petition, civil complaint, and notice of appeal are:

• Habeas corpus petition.....	\$5.00
• Civil complaint	\$350.00
• Appeal	\$455.00

HABEAS CORPUS PETITIONS

A prisoner seeking habeas corpus relief must file an affidavit to proceed without prepayment of fees. If the prisoner does not have sufficient funds in his prison account or elsewhere to pay the \$5.00 filing fee, the Court will grant him *in forma pauperis* status and waive the entire fee. The prisoner may then proceed with his action without the prepayment of the filing fee. 28 U.S.C. § 1915(a)(1).

CIVIL COMPLAINTS AND APPEALS

Prisoners must pay the full filing fee. If a prisoner brings a civil action *in forma pauperis*, the prisoner shall be required to pay the full amount of the filing fee. 28 U.S.C. § 1915(b)(1).

Initial partial filing fee. The Court will assess and, when funds exist, collect, as partial payment of the filing fee, an initial partial filing fee of 20 percent of the greater of:

- (1) the average monthly deposits to the prisoner's account; or
- (2) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the complaint.

28 U.S.C. § 1915(b)(1). No matter how little money is in the prisoner's account, prison officials must forward payments to the Court until the initial partial filing is paid. *In re Prison Litigation Reform Act*, Administrative Order No. 97-01, Part II(C), 105 F.3d 1131, 1133 (6th Cir.1997).

Monthly payments. After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The cashier of the prison shall forward payments from the prisoner's account to the Clerk of the Court each time the amount in the account exceeds \$10 until the filing fees are paid. 28 U.S.C. § 1915(b)(2).

If you cannot pay the initial partial filing fee. In no event shall a prisoner be prohibited from bringing a civil action for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee. 28 U.S.C. §1915(b)(4).

Example of how the filing fee will be assessed and collected. If Prisoner A had an average monthly balance in his/her prisoner's account for the previous six months of \$2 and average monthly deposits of \$20, then his/her initial partial filing fee would be \$4, because the greater of his/her average monthly balance (\$2) and average monthly deposits (\$20) is \$20 and 20% of \$20 is \$4:

Average monthly deposit x 20%	=	Initial partial filing fee
\$20 x .20	=	\$4.00

The Court's Order granting leave to proceed without prepayment of fees or security therefor would require the Prison Cashier to forward \$4 to the Clerk of Court. No matter how little money is in Prisoner A's account when the Order is issued, prison officials must forward payments to the Court until the entire \$4 initial partial filing is paid. *In re Prison Litigation Reform Act*, Administrative Order No. 97-01, Part II(C), 105 F.3d at 1133.

The Court's Order would also require the Cashier to collect each month a monthly payment of 20% of the preceding month's income credited to Prisoner A's account. If in the first month following the payment of the initial partial filing fee Prisoner A received \$20 in State pay and no other monies were deposited in his account, his monthly payment would be \$4 (\$20 x .20 = \$4). If in the second month following the payment of the initial partial filing fee Prisoner A received \$20 in State pay and \$50 from his family, his monthly payment would be \$14 (\$70 x .20 = \$14). Every month the deposits in Prisoner A's account exceeded \$10, the prison Cashier would assess, collect, and forward to the Clerk of Court a monthly payment of 20% of that month's total deposits. Each month the Cashier would continue to assess and collect monthly payments until the entire filing fee is paid.

Filing a complaint waives any objection to the Court assessing the fee. By filing the complaint, a prisoner waives any objection to the fee assessment by the Court. Furthermore, the prisoner waives any objection to the withdrawal of funds from the trust account by prison officials to pay the prisoner's court fees and costs. Prisoners have a duty to cooperate during the litigation. *In re Prison Litigation Reform Act*, Administrative Order No. 97-01, Part II, 105 F.3d at 1132.

Administrative remedies. Prisoners must exhaust available administrative remedies before bringing a civil action in federal court under 42 U.S.C. §1983 or any other federal law. The failure to exhaust such administrative remedies will result in the dismissal of the civil action, 42 U.S.C. §1997e(a). In most instances, prisoners must exhaust the state formal grievance procedure set forth in Ohio Admin. Code § 5120-9-31, which includes filing a formal grievance with the inspector of institutional services and appealing to the Chief Inspector of the Ohio Department of Rehabilitation and Correction, prior to filing a complaint in federal court.

Prisoners seeking federal habeas corpus relief must first exhaust their available state court remedies under 28 U.S.C. 2254 (b).

Court required to dismiss complaints which are frivolous, malicious, or fail to state a claim. The Court is required to conduct an initial screening of the complaint and to dismiss any action brought by a prisoner confined in any jail, prison, or other correctional facility with respect to prison conditions under 42 U.S.C. §1983 or any other federal law if the Court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks

monetary relief from a defendant who is immune from such relief. 42 U.S.C. §1997e(c)(1); 28 U.S.C. §§ 1915A and 1915(e)(2).

Even if the complaint is dismissed, you must pay the entire filing fee. Dismissal of a civil action at any stage of the proceedings for any reason, including dismissals for failure to exhaust administrative remedies or dismissals on the basis that the claim is frivolous, malicious, or fails to state a claim upon which relief can be granted, will not release the prisoner from the obligation to pay the total filing fee. 28 U.S.C. § 1915(b)(1). Even if the Court dismisses the complaint the same day leave to proceed *in forma pauperis* is granted or a prisoner voluntarily dismisses a complaint (or files an appeal), he or she has to pay the required filing fees. *In re Prison Litigation Reform Act*, Administrative Order No. 97-01, Part III, 105 F.3d at 1133-34.

If a federal court has dismissed your complaints or appeals as frivolous, malicious or failing to state a claim three times in the past, you cannot proceed in forma pauperis in a new case absent a threat of imminent, serious physical injury. A prisoner who has on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, cannot proceed *in forma pauperis* unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

AFFIDAVIT

I, Frederick Hall, declare that I am the (check appropriate box):

petitioner/plaintiff/movant other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of the full filing fee or costs under 28 U.S.C. § 1915, I declare that I am unable to prepay the full filing fee or the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under the penalty of perjury:

1. Are you currently incarcerated? Yes No

If "Yes", state the place of incarceration: hebanon

(If "No," this is the wrong form for you. You should request the Non-Prisoner Declaration in Support of Request to Proceed *In Forma Pauperis*.)

2. Do you have a work, program, status assignment or other circumstances which causes you to be paid by the prison, jail, or other custodial institution? Yes No

If "Yes", state the amount credited to you each month: \$ 17.00 /month

3. In the past 12 months have you received any money from the following sources? If so, state the total amount received.

		<u>Amount</u>
a. Business, profession or other self-employment	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$ _____
b. Rent payments, interest or dividends	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$ _____
c. Pensions, annuities or life insurance payments	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$ _____
d. Disability or workers compensation payments	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$ _____
e. Gifts or inheritances	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$ _____
f. Any other sources	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$ _____

If the answer to any of the above is "Yes", describe each source of money and state the amount received **and** what you expect you will continue to receive. *from family AVERAGE was
30.87 for the last 3 months I expect to receive 20.00*

4. Do you have **any** cash or checking or savings accounts outside the prison?

Yes No Amount \$ _____

5. Do you have a secondary savings account, such as a certificate of deposit or a savings bond, which is recorded by the prison cashier?

Yes No Amount \$ _____

6. Do you own any assets, including real estate, stocks, bonds, securities, other financial instruments, automobiles or other valuable property?

Yes No

If "Yes", describe each asset and state its value.

<u>ASSET</u>	<u>VALUE</u>
Autos _____	\$ _____
(Make/model/year) _____	
Stocks _____	\$ _____
_____	\$ _____
Bonds _____	\$ _____
Notes _____	\$ _____
Real Estate _____	\$ _____
\$ _____ (mortgage)	
Other _____	\$ _____

7. Have you on three or more prior occasions, while incarcerated or detained in any prison, jail or other facility, brought an action in a court of the United States that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted?

Yes

No

If "Yes," list the dismissals:

Date Dismissed	Case Name	Case No.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have submitted above a complete statement of all the assets I possess and that all of the information is true and correct.

I understand that my signature below authorizes the institution of incarceration to forward from my account to the Clerk of the Court any initial partial filing fee assessed by the Court in the amount of 20 percent of the greater of the average monthly deposits to my prison account or the average monthly balance in my prison account for the six-month period immediately preceding the filing of the complaint. Thereafter, I authorize the institution of incarceration to forward monthly payments of 20 percent of my preceding month's income credited to my prison account until I have paid the full amount of the filing fee.

3-7-07
DATE

Frederick Hall
SIGNATURE OF APPLICANT

Have the institution fill out the Certificate portion of this affidavit and attach a certified copy of your prison trust fund account statement from the institution(s) of your incarceration showing at least the past six months' transactions.

381900 Hall

CERTIFICATE

(To be completed by the institution of incarceration)

I certify that the applicant named herein has the sum of \$ 47.04 on account to his/her credit at (name of institution) Lebanon Correctional Institution. I further certify that during the past six months the applicant's average monthly balance was \$ 30.87 and the applicant's average monthly deposits were \$ 28.25. I have attached a certified copy of the applicant's prison trust fund account statement showing at least the past six months' transactions.

I further certify that the applicant does/does not have a secondary savings account(s), such as a certificate of deposit or a savings bond. The secondary account(s) balance is \$ -0-.

3/5/07

DATE

Ron Watts

SIGNATURE OF AUTHORIZED OFFICER

03/05/2007

Lebanon Correctional Institution

Inmate Demand Statement

Inmate Name: HALL, FREDRICK

Number: A381900

Lock Location: LeCI,4,G,3,,43

Date Range: 08/01/2006 Through 03/06/2007

Beginning Account Balances:

Ending Account Balances:

	Saving	Debt	Payable		Saving	Debt	Payable
Medical Co-Pay	\$0.00	\$0.00	\$0.00	Medical Co-Pay	\$0.00	\$0.00	\$3.00
Pos Exemption	\$0.00	\$0.00	\$0.00	Pos Exemption	\$7.00	\$0.00	\$0.00
Inmate's Personal	\$0.00	\$0.00	\$0.00	Inmate's Personal A	\$40.04	\$0.00	\$0.00
Begin Totals	\$0.00	\$0.00	\$0.00	End Totals	\$47.04	\$0.00	\$3.00

Transaction Date	Transaction Amount	Description	Comment	Saving Balance	Debt Balance	Payable Balance
08/12/2006	\$94.83	Beginning Cactas Balance	LeCI Beg Cactas Bal	\$94.83	\$0.00	\$0.00
08/16/2006	\$50.00	Money Order	LILLIE WHITFIELD	\$144.83	\$0.00	\$0.00
08/17/2006	(\$12.89)	Commissary Sale	Ticket Number 108	\$131.94	\$0.00	\$0.00
08/22/2006	(\$113.90)	Withdrawal to UNION SUPPLY COMPANY		\$18.04	\$0.00	\$0.00
08/28/2006	(\$17.67)	Commissary Sale	Ticket Number 1817	\$0.37	\$0.00	\$0.00
09/01/2006	\$9.63	Reservation to Inmate's Personal Account	Odrc Pos Exemption	\$0.37	\$0.00	\$0.00
09/08/2006	\$17.00	State Pay	State Pay	\$17.37	\$0.00	\$0.00
09/11/2006	(\$13.45)	Commissary Sale	Ticket Number 3192	\$3.92	\$0.00	\$0.00
09/25/2006	(\$2.54)	Commissary Sale	Ticket Number 5078	\$1.38	\$0.00	\$0.00
09/26/2006	\$30.00	Money Order	DEXTER PARKER	\$31.38	\$0.00	\$0.00
09/29/2006	\$50.00	Money Order	wanda hall	\$81.38	\$0.00	\$0.00
10/01/2006	\$0.00	\$10.00 Reservation to Pos Exemption	Odrc Pos Exemption	\$81.38	\$0.00	\$0.00
10/06/2006	\$17.00	State Pay	State Pay	\$98.38	\$0.00	\$0.00
10/12/2006	(\$44.74)	Commissary Sale	Ticket Number 7073	\$53.64	\$0.00	\$0.00
10/23/2006	(\$27.95)	Commissary Sale	Ticket Number 8546	\$25.69	\$0.00	\$0.00
11/01/2006	\$0.00	\$10.00 Reservation to Pos Exemption	Pos Exemption	\$25.69	\$0.00	\$0.00
11/03/2006	\$17.00	State Pay	State Pay	\$42.69	\$0.00	\$0.00
11/06/2006	(\$5.00)	Club Sales	ACO PHOTO SALES	\$37.69	\$0.00	\$0.00
11/06/2006	(\$36.26)	Commissary Sale	Ticket Number 10081	\$1.43	\$0.00	\$0.00
11/07/2006	\$30.00	Money Order	GENEVA JENNINGS	\$31.43	\$0.00	\$0.00
11/09/2006	(\$0.39)	Postage Charges (USPS)		\$31.04	\$0.00	\$0.00
11/13/2006	\$20.00	Money Order	VANESSA HODGE	\$51.04	\$0.00	\$0.00
11/15/2006	\$20.00	Money Order	WANDA HALL	\$71.04	\$0.00	\$0.00

11/20/2006	(\$52.59) Commissary Sale	Ticket Number 12022	\$18.45	\$0.00	\$0.00
12/01/2006	\$0.00 \$10.00 Reservation to Pos Exemption	Pos Exemption	\$18.45	\$0.00	\$0.00
12/04/2006	(\$17.75) Commissary Sale	Ticket Number 13293	\$0.70	\$0.00	\$0.00
12/08/2006	\$17.00 State Pay	State Pay	\$17.70	\$0.00	\$0.00
12/08/2006	(\$1.95) Postage Charges (USPS)		\$15.75	\$0.00	\$0.00
12/08/2006	(\$0.39) Postage Charges (USPS)		\$15.36	\$0.00	\$0.00
12/18/2006	(\$14.91) Commissary Sale	Ticket Number 15082	\$0.45	\$0.00	\$0.00
12/20/2006	\$15.00 Money Order	VANESSA STROUDHOUSE	\$15.45	\$0.00	\$0.00
01/01/2007	\$0.00 \$10.00 Reservation to Pos Exemption	Pos Exemption	\$15.45	\$0.00	\$0.00
01/02/2007	\$60.00 Money Order	CROSETTI HARRIS	\$75.45	\$0.00	\$0.00
01/02/2007	\$60.00 Money Order	CROSETTI HARRIS	\$135.45	\$0.00	\$0.00
01/02/2007	(\$68.80) Commissary Sale	Ticket Number 16980	\$66.65	\$0.00	\$0.00
01/05/2007	\$17.00 State Pay	State Pay	\$83.65	\$0.00	\$0.00
01/16/2007	(\$38.29) Commissary Sale	Ticket Number 18644	\$45.36	\$0.00	\$0.00
01/29/2007	(\$40.62) Commissary Sale	Ticket Number 20375	\$4.74	\$0.00	\$0.00
02/01/2007	\$0.00 \$10.00 Reservation to Pos Exemption	Pos Exemption	\$4.74	\$0.00	\$0.00
02/09/2007	\$17.00 State Pay	State Pay	\$21.74	\$0.00	\$0.00
02/09/2007	\$15.00 Money Order	VANESSA STROUD	\$36.74	\$0.00	\$0.00
02/12/2007	(\$34.74) Commissary Sale	Ticket Number 21858	\$2.00	\$0.00	\$0.00
02/22/2007	(\$3.00) Medical Co-Pay	2/13	\$2.00	(\$3.00)	\$0.00
02/28/2007	(\$1.96) Commissary Sale	Ticket Number 23971	\$0.04	(\$3.00)	\$0.00
03/01/2007	\$0.00 \$7.00 Reservation to Pos Exemption	Pos Exemption	\$0.04	(\$3.00)	\$0.00
03/02/2007	\$50.00 Money Order	WANDA HALL	\$47.04	\$0.00	\$3.00

Outstanding Debts:

Start Date	Description	Case	Agency	County	Total Debt	Paid to Date	Balance Owed
	Medical Co-Pay						\$0.00
Total Outstanding Case Balances						\$0.00	

Outstanding Holds:

Start Date	Description	Case	Agency	County	Total Debt	Paid to Date	Balance Owed
Total Outstanding Case Holds						\$0.00	

Outstanding Investments / EPC:

Investment Type	Investment Type Description	Invest Company	Company Description	Balance